

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

**Sunnyvale Shopping Center,
LLC**, a Delaware Limited Liability
Company

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Sunnyvale Shopping Center, LLC,
a Delaware Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Sunnyvale Shopping Center, LLC owned the real property located at or about 110 E El Camino Real, Sunnyvale, California, upon which

1 the business “Pizza My Heart” operates, between October 2020 and February
2 2021.

3 3. Defendant Sunnyvale Shopping Center, LLC owned the real property
4 located at or about 114 E El Camino Real, Sunnyvale, California, upon which
5 the business “Tastea” operates, between October 2020 and February 2021.

6 4. Defendant Sunnyvale Shopping Center, LLC owned the real property
7 located at or about 116 E El Camino Real, Sunnyvale, California, upon which
8 the business “Five Guys” operates, between October 2020 and February
9 2021.

10 5. Defendant Sunnyvale Shopping Center, LLC owned the real property
11 located at or about 122 E El Camino Real, Sunnyvale, California, upon which
12 the business “Pinkberry” operates, between October 2020 and February
13 2021.

14 6. Defendant Sunnyvale Shopping Center, LLC owns the real property
15 located at or about 110 E El Camino Real, Sunnyvale, California, upon which
16 the business “Pizza My Heart” operates, currently.

17 7. Defendant Sunnyvale Shopping Center, LLC owns the real property
18 located at or about 114 E El Camino Real, Sunnyvale, California, upon which
19 the business “Tastea” operates, currently.

20 8. Defendant Sunnyvale Shopping Center, LLC owns the real property
21 located at or about 116 E El Camino Real, Sunnyvale, California, upon which
22 the business “Five Guys” operates, currently.

23 9. Defendant Sunnyvale Shopping Center, LLC owns the real property
24 located at or about 122 E El Camino Real, Sunnyvale, California, upon which
25 the business “Pinkberry” operates, currently.

26 10. Plaintiff does not know the true names of Defendants, their business
27 capacities, their ownership connection to the property and business, or their
28 relative responsibilities in causing the access violations herein complained of,

1 and alleges a joint venture and common enterprise by all such Defendants.
2 Plaintiff is informed and believes that each of the Defendants herein is
3 responsible in some capacity for the events herein alleged, or is a necessary
4 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
5 the true names, capacities, connections, and responsibilities of the Defendants
6 are ascertained.

7
8 **JURISDICTION & VENUE:**

9 11. The Court has subject matter jurisdiction over the action pursuant to 28
10 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
11 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

12 12. Pursuant to supplemental jurisdiction, an attendant and related cause
13 of action, arising from the same nucleus of operative facts and arising out of
14 the same transactions, is also brought under California's Unruh Civil Rights
15 Act, which act expressly incorporates the Americans with Disabilities Act.

16 13. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
17 founded on the fact that the real property which is the subject of this action is
18 located in this district and that Plaintiff's cause of action arose in this district.

19
20 **FACTUAL ALLEGATIONS:**

21 14. Plaintiff went to Pizza My Heart, Tastea, Five Guys and Pinkberry in
22 October 2020 with the intention to avail himself of their goods or services
23 motivated in part to determine if the defendants comply with the disability
24 access laws. Not only did Plaintiff personally encounter the unlawful barriers
25 in October 2020, but he wanted to return and patronize the businesses several
26 times but was specifically deterred due to his actual personal knowledge of the
27 barriers gleaned from his encounter with them.

28 15. Pizza My Heart, Tastea, Five Guys and Pinkberry are facilities open to

1 the public, places of public accommodation, and business establishments.

2 16. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
3 to provide wheelchair accessible dining surfaces in conformance with the ADA
4 Standards as it relates to wheelchair users like the plaintiff.

5 17. Pizza My Heart, Tastea, Five Guys and Pinkberry provide dining
6 surfaces to their customers but fail to provide wheelchair accessible dining
7 surfaces.

8 18. One problem that plaintiff encountered is the lack of sufficient knee or
9 toe clearance under the dining surfaces located outside (in front of the
10 businesses) for wheelchair users.

11 19. Plaintiff believes that there are other features of the dining surfaces that
12 likely fail to comply with the ADA Standards and seeks to have fully compliant
13 dining surfaces available for wheelchair users.

14 20. On information and belief the defendants currently fail to provide
15 wheelchair accessible dining surfaces.

16 21. These barriers relate to and impact the plaintiff's disability. Plaintiff
17 personally encountered these barriers.

18 22. As a wheelchair user, the plaintiff benefits from and is entitled to use
19 wheelchair accessible facilities. By failing to provide accessible facilities, the
20 defendants denied the plaintiff full and equal access.

21 23. The failure to provide accessible facilities created difficulty and
22 discomfort for the Plaintiff.

23 24. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 25. The barriers identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 26. Plaintiff will return to Pizza My Heart, Tastea, Five Guys and Pinkberry
5 to avail himself of their goods or services and to determine compliance with
6 the disability access laws once it is represented to him that Pizza My Heart,
7 Tastea, Five Guys and Pinkberry and their facilities are accessible. Plaintiff is
8 currently deterred from doing so because of his knowledge of the existing
9 barriers and his uncertainty about the existence of yet other barriers on the
10 site. If the barriers are not removed, the plaintiff will face unlawful and
11 discriminatory barriers again.

12 27. Given the obvious and blatant nature of the barriers and violations
13 alleged herein, the plaintiff alleges, on information and belief, that there are
14 other violations and barriers on the site that relate to his disability. Plaintiff will
15 amend the complaint, to provide proper notice regarding the scope of this
16 lawsuit, once he conducts a site inspection. However, please be on notice that
17 the plaintiff seeks to have all barriers related to his disability remedied. See
18 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
19 encounters one barrier at a site, he can sue to have all barriers that relate to his
20 disability removed regardless of whether he personally encountered them).

21
22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
23 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
24 Defendants.) (42 U.S.C. section 12101, et seq.)

25 28. Plaintiff re-pleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint.

28 29. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any
 2 place of public accommodation is offered on a full and equal basis by anyone
 3 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 4 § 12182(a). Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,
 6 or procedures, when such modifications are necessary to afford
 7 goods, services, facilities, privileges, advantages, or
 8 accommodations to individuals with disabilities, unless the
 9 accommodation would work a fundamental alteration of those
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 13 defined by reference to the ADA Standards.
- 14 c. A failure to make alterations in such a manner that, to the
 15 maximum extent feasible, the altered portions of the facility are
 16 readily accessible to and usable by individuals with disabilities,
 17 including individuals who use wheelchairs or to ensure that, to the
 18 maximum extent feasible, the path of travel to the altered area and
 19 the bathrooms, telephones, and drinking fountains serving the
 20 altered area, are readily accessible to and usable by individuals
 21 with disabilities. 42 U.S.C. § 12183(a)(2).

22 30. When a business provides facilities such as dining surfaces, it must
 23 provide accessible dining surfaces.

24 31. Here, accessible dining surfaces have not been provided in
 25 conformance with the ADA Standards.

26 32. The Safe Harbor provisions of the 2010 Standards are not applicable
 27 here because the conditions challenged in this lawsuit do not comply with the
 28 1991 Standards.

1 33. A public accommodation must maintain in operable working condition
2 those features of its facilities and equipment that are required to be readily
3 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

4 34. Here, the failure to ensure that the accessible facilities were available
5 and ready to be used by the plaintiff is a violation of the law.

6
7 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
8 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
9 Code § 51-53.)

10 35. Plaintiff repleads and incorporates by reference, as if fully set forth
11 again herein, the allegations contained in all prior paragraphs of this
12 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
13 that persons with disabilities are entitled to full and equal accommodations,
14 advantages, facilities, privileges, or services in all business establishment of
15 every kind whatsoever within the jurisdiction of the State of California. Cal.
16 Civ. Code § 51(b).

17 36. The Unruh Act provides that a violation of the ADA is a violation of the
18 Unruh Act. Cal. Civ. Code, § 51(f).

19 37. Defendants’ acts and omissions, as herein alleged, have violated the
20 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
21 rights to full and equal use of the accommodations, advantages, facilities,
22 privileges, or services offered.

23 38. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
24 discomfort or embarrassment for the plaintiff, the defendants are also each
25 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
26 (c).)

27 39. Although the plaintiff encountered frustration and difficulty by facing
28 discriminatory barriers, even manifesting itself with minor and fleeting

1 physical symptoms, the plaintiff does not value this very modest physical
2 personal injury greater than the amount of the statutory damages.

3
4 **PRAYER:**

5 Wherefore, Plaintiff prays that this Court award damages and provide
6 relief as follows:

7 1. For injunctive relief, compelling Defendants to comply with the
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
9 plaintiff is not invoking section 55 of the California Civil Code and is not
10 seeking injunctive relief under the Disabled Persons Act at all.


11 2. For equitable nominal damages for violation of the ADA. See
12 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
13 and any other equitable relief the Court sees fit to grant.

14 3. Damages under the Unruh Civil Rights Act, which provides for actual
15 damages and a statutory minimum of \$4,000 for each offense.

16 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
17 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

18
19 Dated: March 24, 2021

CENTER FOR DISABILITY ACCESS

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21 By: 
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23 Amanda Seabock, Esq.
24 Attorney for plaintiff
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